IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

WP(C).No. 25035 of 2007(E)

PETITIONER:

JOSEKUTTY JOSEPH, S/O.JOSEPH JOSEPH,
AGED 65 YEARS, VELLEKALAM HOUSE, VAZHAPPALLI WEST
VILLAGE,THURUTHI P.O.,CHANGANACHERRY,KOTTAYAM DIST

BY ADV. SRI.BABU JOSEPH KURUVATHAZHA
SRI.K.I.SAGEER

RESPONDENTS:

1. M/S. RASHTRA DEEPIKA LIMITED,
DEEPIKA BUILDINGS, P.B.NO.7, COLLEGE ROAD,
KOTTAYAM, REP. BY ITS MANAGING DIRECTOR,
REV.FR.ROBIN MATHEW.

2. M. ABOOBAKCER PHARIS @ M.A. PHARIS,
CHAIRMAN, RASHTRA DEEPIKA LIMITED NO.13,
RAGAVEERA AVENUE, POES GARDEN, CHENNAI-600 086.

3. MAR MATHEW ARACKAL,
BISHOP OF KANJIRAPPALLY DIOCESE, BHISHOP'S HOUSE,
P.B.NO.22, KANJIRAPPALLI, KOTTAYAM DISTRICT.

4. RANJITH PANICKER,
VICE CHAIRMAN, RASHTRA DEEPIKA LIMITED NO.9,
AMBADI RETREAT, CHILAVANNUR ROAD, KADAVANTHRA,
ERNAKULAM, KOCHI-20.

5. REGISTRAR OF COMPANIES,
COMPANY LAW BHAVAN, THRIKKAKARA, KAKKANAD,
COCHIN-22.

6. CHENNAI CYBER PROPERTIES PRIVATE LTD.,
13, RAGAVEERA AVENUE, POES GARDEN, CHENNAI-600086,
REP. BY ITS DIRECTOR, M.ABOOBACKER PHARIS @
M.A. PHARIS.

BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC,J.

W.P (C) No. 25035 of 2007

Dated this the 17th day of September, 2007

J U D G M E N T

The complaint of the petitioner is that the 5th respondent has not considered or disposed of Exhibit-P4. Exhibit-P4 is a complaint filed by the petitioner invoking the jurisdiction of the 5th respondent under Section 234 (7) of the Companies Act. Section 234 (7) authorises investigation by the 5th respondent in a case where the business of a company is being carried on in fraud of its creditors or of persons dealing with the company or otherwise for a fraudulent or unlawful purpose.

2. On going through Exhibit-P4 complaint filed by the petitioner I notice that allegations are regarding allotment of shares, appointment and retirement of Directors, disposal of assets etc. Thus, none of these are related to the business of the company. They do not disclose a case for the petitioner that the business of the company has been carried on in any fraudulent or unlawful manner as specified in Section 234 (7) of the Companies Act. If that be so, Exhibit-P4 is misconceived and does not merit an investigation as sought for by the writ petitioner.

3. It is evident from the statement filed by the 5th respondent that the petitioners have already approached the Company Law Board invoking its jurisdiction under Section 397 and 398 of the Companies Act. In my view that is the appropriate proceedings in a case like this. Without prejudice to the rights of the petitioner to prosecute the proceedings under Sections 397 and 398 of the Companies Act, this writ petition is closed.

(ANTONY DOMINIC, JUDGE)

ma

K.THANKAPPAN,J

CRL.A. NO.92 OF 1999

ORDER

25th May, 2007